File No. 347

19 32.

Collection No.

Mysore Residency

Bangalore.

P&S S

28/6

Pros. Serial Nos. 1-11

S.N.9 dispatched 7/3/45

Subject.

Incometax Review Petition of Mr. E.J.Robertson (No. 1932-33) South Parade, Bangalore.

Previous References.	Later References.

S. 97.—(Blue).

MFP—168S&P—(M-184)—11-8-34—60,000.

Typed Copy

Submitted to A.C.

The assessee is the Retired Accountant of the Port Trust of Calcutta. At the time of retirement he was paid not only his Provident Fund money but also a gratuity of Rs.25000. The latter was taxed at source by the Port Trust of Calcutta. Including this sum, the assessee's total income in 1930-31 - assessable in the current official year 1931-32 - amounted to Rs.32,330 and an assessment on this income was proposed to be made.

In reply to the draft order sent to him, the assessee has sent in a letter of representation stating that the su of Rs.25000 should not be assessed to tax in view of the provisions contained in clause V of subsection 3 to Sec.4 which reads as follows:

"Any capital sum received in commutation of the whole or a portion of a pension - - - - or as the accumulate balance at the credit of a subscriber to any such Provident Fund" shall not be assessed.

By no stretch of imagination can the gratuity be calle the capital sum received in commutation of a pension. The assessee was at no time a pensioner. The fact that this gratuity was given in lieu of pension is immaterial. Thus it was not given in commutation of a pension is clear. Hence the gratuity cannot be exempted from taxation under Section 4(3) V. That gratuities are generally taxable will be evident from the exemptions granted in respect of certain gratuities - see items 14 to 20 mentioned in para 17 of Part III of the I.T. Manual.

The other contention of the assessee is that if a businessman had paid for an annuity in favour of his employee, the purchase price of the Annuity would have been allowed and exempted from taxation in the hands of the businessman. This is quite true. Similarly the Port Trust, if it were assessable, would have been exempted from payment of tax on this sum of Rs.25000. In no case

the whole of it straight off and then on the interest on it year by year. Surely this cannot be correct?

Id. G.H.C.
6-2-32.

(8) Section 4(3)vii reads as follows:-

"This Act shall not apply to the following classes of income.

vii Any receipts not being receipts arising from business or the exercise of a profession, vocation or occupation, which are of a casual and ~~more~~ non-recurring nature or are not by way of additions to the remunerations of an employee"

This receipt of Rs.25000/- is by way of addition to the remuneration of the assessee; hence it is taxable and the Act applies.

Any receipt by an employee cannot become capital until it has been assessed - provided it is assessable by itself.

A sum of about Rs.1500 will have to be refunded (tax recovered at source) if it is decided not to assess his gratuity.

If the A.C. feels any doubt in the matter, it may perhaps be referred to the Commissioner.

Id. D.T. ~~D/~~ 12/2/32

(9) Yes please. It is definitely casual & non-~~reason~~-recurring ~~ing~~.

(10) Put up to Commr. explaining the whole case.

Id.G.H.C.
13/2.

(11) In order to obtain exemption as 'casual' two conditions must be satisfied:

(1) The receipt must ~~be~~ not be the proceeds of a vocation or employment and (2) It must not be annual.

Both

U.O. reference from the Assistant Commissioner of Income-tax, C. & M. Station, Bangalore, dated the 15th February, 1932.

The assessee is a retired accountant of the Port Trust of Calcutta. The question is whether a sum of Rs.25,000/- received by the assessee from the Port Trust as "retiring gratuity" is liable to income-tax or not.

Please see the assessee's representation at slip C and the Income-tax Officer's and the Assistant Commr.'s notes at slip D. On an examination of the relevant provisions of the Income-tax Act, it would appear that the position taken up by the Income-tax Officer is correct.

The assessee has admitted that the amount he received was a gratuity. This is taxable under section 7. Under section 60, the Governor General in Council has exempted certain classes of gratuities from income-tax - vide items (14) to (20B) mentioned in para 17 of Part III of the I.T. Manual - but the gratuity received by the assessee does not fall under any of these items.

The assessee contends that the amount in question should be brought under the first part of item (v) of section 4(3), viz, "any capital sum received in commutation of the whole or a portion of a pension", and exempted from tax. This cannot clearly be done as the amount was not received in commutation of a pension. It might be in lieu of a pension, but an amount received in lieu of a pension is not exempt from tax. The assessee has admitted that he waived his pensionary rights for the benefits accruing from a Provident Fund plus a retiring gratuity. He was therefore not entitled to a pension at all, and so, there cannot be any question of the amount being the commuted value of a pension.

* Income-tax on this amount has already been deducted at source at Calcutta and assessee will be given credit for the tax so deducted.

employee for services rendered which is taxable under section 7.

(6) Under section 15, sums paid by an assessee in respect of a contract for a deferred annuity is exempt from tax, subject to a maximum of one-sixth of the total income of the assessee in the year of assessment. In this case, the whole amount of Rs. 25,000/- was utilised in buying the annuity. The Income-tax Officer has allowed rebate on Rs. 5388/-, which is the maximum admissible under the section.

(7) In the circumstances, there appears to be no objection to the assessment proposed being made.

(8) The file may be returned to the Assistant Commissioner.

For orders.

K.D. Nayak
9—3—32.

Secretary.

(From Sec. I).

(9) Are there no special powers that can be used against him?
9/3

C. & M. STATION BANGALORE

Paragraph (11) ante.

Section 33 empowers the Commissioner "to pass such orders as he thinks fit", "subject to the provisions of the Act".

Section 60 provides for three kinds of exemptions in respect of income-tax:-

(i) Exemptions in favour of any class of income,

(ii) Exemptions in favour of the income of any class of persons, and

(iii) Exemptions in favour of the income of any particular individual, where, by reason of any portion of his salary being paid in arrears or in advance, his income becomes liable for assessment.

In the present case, the exemption sought for is in respect of a class of income, namely, gratuities paid to employees for services rendered, falling under item (i) above. It may be noted that in exercise of the powers conferred under section 60, the Governor General in Council has granted exemptions in respect of only certain classes of gratuities (vide items 14 to 20B in para 17 of Part III of the I.T.Manual). He has not exempted gratuities as a class. In fact, while dealing with exemptions of casual and non-recurring incomes, the Central Board of Revenue have specifically stated that such exemptions are not to apply to any gratuity to an employee for services rendered which is taxable under section 7.

There are no other provisions under which the recovery of the tax can be waived.

6.4.82

W.O. No. 2606.
13th April 1982

14

Yes. I suppose he must give a clear 3 days
it does seem a hard case!

14.4.32

Yes

Seen Yo

1514

OFFICE OF THE RESIDENT IN MYSORE.
BANGALORE.
15 APR. 1932
Pegd. No. 3589
Le. No.

15

Seen

Submitted for information.

The Assistant Commissioner's file may now be returned.

(From para. 13).

U.O.No. 2771
20th April. 1932

19-4-32

file.
for
21.4.32

S.N.1

P.u.c.

Letter No.F-666 dated the 27th October, 1932, from the Collector and Assistant Commissioner of Income-tax, Civil and Military Station, Bangalore.

---

(1)

The assessee in this case is Mr.E.J.Robertson, late Deputy Chief Accountant of the Commissioners for the Port of Calcutta. The whole question at issue is whether a sum of Rs.25,000/- paid to Mr.Robertson by his employers at the time of his retirement from their service in 1930, is to be treated as a receipt under the head "Salaries" as defined in section 7(1) and charged to income-tax, or whether it should be regarded as a "capital sum received in commutation of a pension" and exempted from tax under section 4(3)(v). Mr.Pragasam, who was the Income-tax Officer of the Station when the assessment proceedings in this case were first started, held the view that the amount was taxable under section 7, but the Collector and Assistant Commissioner was of opinion that whatever might be the strict interpretation of the law, it was unfair to tax the amount in question. He therefore referred the matter u.o. to the Commissioner, who, after examining the case, remarked that the income could not be exempted from tax under any of the provisions of the Act. The amount was accordingly taxed by the Income-tax Officer. The assessee has now appealed to the Commissioner against this assessment. With his appeal memo, he has also filed a "Statement" wherein he has explained in detail the exact nature and object of the payment. In his letter forwarding the appeal petition to the Commissioner for disposal, the Assistant Commissioner states that the amount in question was actually the commuted value of a part of the pension to which the assessee was entitled and that the assessment appears to have been wrongly made under a misconception of the actual facts of the case. He also refers

* Vide paras 1 to 11 of the notes at (D.)

* Para 12 of -do-

* Paras 1 to 13 of the notes at (H.)

* B

* (L)

* PUC.

actuarial value of a hypothetical pension nor does it appear to have been calculated with reference to the amount of the pension to which the assessee would have been entitled if he had remained in service. It is not known on what basis this sum of Rs.25,000/- was actually arrived at. The commuted value of his full pension at the time he gave up his pensionary rights would have amounted to Rs.59,182/-. If, instead of waiving his pensionary rights, Mr.Robertson had volunteered to retire from service immediately and accepted a lump sum payment in lieu of a pension, the receipt could have been regarded as the commuted value of a pension, by whatever name the payment was called. Mr.Robertson did not, however, do this, but chose to remain in service as an employee who was not entitled to a pension at all. He cannot admittedly have it both ways.

(4)

It may be that it looks grossly unjust to tax a lump sum like this received by an employee at the time of his retirement, but there is no reason why it should be exempted while similar payments such as lump sum gratuities that are paid in lieu of pensions, e.g., to Government servants who have not rendered sufficient service to entitle them to a pension, are liable to tax under sec.7. Mr.Sundaram argues that the position is anomolous and presumably due to the fact that the framers of section 7 had in mind only recurring gratuities and not the lump sum gratuities referred to above. But, if it were so, the Governor-General in Council, who has by notification in the Gazette of India, exempted several kinds of gratuities from tax, under section 60, such as gratuities received by Railway servants, would have extended the exemption to all lump sum gratuities. This he has not done, and the presumption, therefore, is that such receipts are taxable, unless they have been specifically exempted under section 60 or are really of the nature of a commuted pension.

Pages 411-412 of his Law of Income-tax.

(Removed - Put-up in amateur file vide letter)

It

(5) It is also important to note that the Commissioner for the Port of Calcutta who ought to be more familiar with the nature of the payment than any one else, have themselves treated the amount in question as liable to tax under section 7 and deducted the tax due at source. (Credit for the tax so deducted has been given by the I.T.O. here). The assessee had told the I.T.O. in May 1931 that he was appealing to the Income-tax authorities in Calcutta against this deduction of tax at source. It is not known whether he actually preferred an appeal, and, if so, what the decision was.

(K)

(6) The assessee himself admits that the assessment of the sum in question is in accordance with the strict letter of the law. The spirit of the law, to which he refers, is a different matter and is not altogether free from doubt.

Para 9 of the "Statement"

(L.)

(7) Another contention raised by the assessee is that the receipt in question should be exempted from tax because it was spent in buing up an annuity. It has been held under section 10(2)(ix) that a lump sum paid to purchase an annuity is an expense incurred in the business, not in the nature of capital expenditure, and is an admissible expense in computing the profits assessable to income-tax. This section, as already explained, has reference to <u>employers</u> only. The corresponding provision in the case of <u>employees</u> is contained in section 7(1) - Proviso to the Explanation. Under this provision, deduction on account of purchasing an annuity is allowed only to the extent of 1/6th of the total income from salary (Salary in this case includes the sum of Rs.25,000/-). Deduction to this extent has already been allowed by the I.T.O.

Para 5 of the notes at (H.)

(8) The appeal may be admitted under section 30(2) as recommended by the Assistant Commissioner (<u>vide</u> para 1 of p.u.c.), but, as the point whether the payment under reference is really of the nature of a commuted pension is not free

(12) Please see Secretary's orders at para 10 ante and Mr.Robertson's letter at S.N.6. The Income-tax authorities in Calcutta did not entertain Mr.Robertson's appeal or express any opinion on the point raised by him; they simply advised him to file his appeal in Bangalore, where the assessment was made. That does not, therefore, help us in the least in coming to a decision on the issue raised.

(13) Please see also Mr.Robertson's letter at S.N.5. The extracts from Sundaram's Law of Income-tax, referred to by him, have already been brought to the notice of the Commissioner by the Assistant Commissioner, in para 3 of P.U.C., and discussed in the preceding notes.

(14) For orders whether action may now be taken as suggested in para 8 ante.

(From para 12)

17.1.33

Counter (15) Please see para 18

(16) Please. The case to the Board

(17) A draft to the Central Board of Revenue is submitted for approval.

(18) With reference to his letter at S.N.7, Mr. Robertson may, if approved, be informed that

a

a reference on the subject has been made to the Central Board of Revenue and that orders on his appeal will be passed on receipt of a reply from the Board.

Draft II submitted. (From para 16)

23-2-33

Comptr.

3/3

(V) S.N.8 Issued No.2035, dated 4-3-1933

S.N.9 Issued No.2036, dated 4-3-1933.

S.N.10
p.u.c.

(19)

(W)

Letter C.No.224-IT/33, dated the 7th April, 1933, from the Secretary, Central Board of Revenue.

A copy of the Privy Council decision referred to in the p.u.c. is put up. The effect of this decision is that a receipt is liable to be assessed to income-tax only if it is in the nature of an income receipt. Income, according to their Lordships, for the purposes of the Indian Income-tax Act, connotes a periodical monetary return "coming in" with some sort of regularity, or expected regularity, from definite sources: anything in the nature of a mere windfall is to be excluded from income. All receipts, which are in the nature of capital receipts, are outside the scope of the Act and therefore not liable to tax, whether they have been specially exempted from tax or not.

In reply to our reference, the Central Board of Revenue say that in view of the above decision of the Privy Council, the retiring bonus paid to Mr. Robertson is not liable to tax. Mr. Robertson's appeal may therefore be allowed.

Draft order submitted for approval.

8-5-33

Issue d Rendent. W
See. 10/5-

(K) S.N.

Issued No.3585, dated the 11th May, 1933.

Submitted.

12.5.33

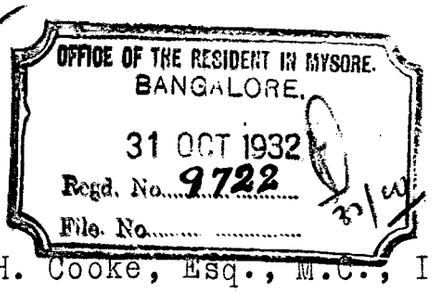
12/5/33

Resident.

CONFIDENTIAL

No. F-666.

Office of the Income-tax Officer,
Civil and Military Station, Bangalore.



Dated the 27th Octr. *193*2

FROM

G. H. Cooke, Esq., M.C., I.C.S.,

Collector & Income-Tax Officer, Civil and Military Station,

BANGALORE.

To

The Secretary to the Resident
and Commissioner of Income-tax,

Civil & Military Station, Bangalore.

SIR,

I have the honour to forward herewith, for favour of disposal, the appeal of Mr. E. J. Robertson under Section 30 of the Income-tax Act against the assessment made by me in which the amount of "gratuity" received by him was included as income. The notice of demand was served on the assessee on 10th May 1932, but the assessee entered into correspondence regarding the refund to be allowed to him on certain dividends the final disposal of which with a modified demand was made on the 27th September 1932. The appeal which has been presented on the 12th instant may therefore be considered as within time and admitted under Section 30(2) of the Act.

2. I beg to invite your attention to my U.O. reference dated 15th February 1932 in which I pointed out that it appeared to be grossly unjust to tax the lump sum of Rs.25,000/- received by the appellant when he retired from service as it was really a 'capital' receipt. You, however, decided that as "gratuity" is taxable under Section 7, nothing could be done. The appeal now presented clearly explains the nature and object of the payment, and I feel bound to state that the assessee appears to me to be correct

in his contention that what was called "gratuity" was really the commuted value of a part of the pension to which the assessee was entitled. I am afraid that the word "gratuity" has been misinterpreted in this case.

3. I would, in this connection, invite a reference to the following note on page 411 of Mr.Sundaram's volume, "The Law of Income-tax in India":

> "While commuted values of pensions are exempt, lump sum gratuities in lieu of pension are taxable under section 7, except gratuities received by Railway servants, which have been specially exempted under Section 60. The position is anomalous and presumably due to the fact that the framers of section 7 had in mind recurring gratuities, i.e., voluntary payments forming perquisites of office and not the lump sum gratuities that are often paid in lieu of pensions, e.g., to Government servants who have not rendered sufficient service to entitle them to a pension.
>
> It was ruled in Rutherford's case by the Patna High Court that as in the case of terms like 'penalty' and 'liquidated damages', the real nature of a transaction should be examined, and that merely calling a payment a gratuity will not make it such if it is really of the nature of a commuted pension. A lump sum actuarially equated to a hypothetical pension is a commuted pension for the purpose of this clause. It is not necessary that a pension should be first sanctioned, or even claimable as of right. Further the concession given by this clause is not confined to pension granted by Government."

I think that this note sufficiently explains my view of the case.

4. I apologise for discussing the case at this stage, but I feel bound to explain that my assessment appears to have been wrongly made under a misconception of the actual facts of the case.

5. The connected records are herewith submitted.

I have the honour to be,

Sir,

Your most obedient servant,

Collector and Income-tax Officer.

2/a G. 48.

The Commissioners for the Port of Calcutta.

CHIEF ACCOUNTANT'S OFFICE,

No..... *Dated* 27th October *1932* .

EXTRACT FROM THE SERVICE RECORDS OF MR. E.J. ROBERTSON

Mr. E.J.Robertson, late Deputy Chief Accountant, entered the service of the Commissioners for the Port of Calcutta on the 15th May 1900.

His date of birth is shewn in the service register as 8th December 1869.

He joined the Ante-Dated Provident Fund on 1st February 1925, after he had attained the age of 55.

(Assuming that instead of joining the Provident Fund, Mr.Robertson had exercised his option of continuing as a pensionable employee, as he had already attained the age of 55, he could under the Rules have applied for leave preparatory to retirement, and at the end of such leave would have rendered a qualifying service of 30 years, a deficiency of 4 months and 14 days being condoned under Article 423(1) of the C.S.R., entitling him to an Ordinary Pension of Rs 500/- per month and an Additioanl Pension of Rs 75/- per month for three years effective service as Officiating Chief Accountant (subject to such pension being recommended by the Head of the Department, and to the sanction of the Commissioners and of Governemtn). Under the Rules he could have applied for the commutation of half of his Pension (subject to the sanction of the Commissioners and of Government). It must be distinctly understood that these are merely assumptions based on the Commissioners Leave and Pension Rules, and in Mr.Robertson's case would have required the sanction of the Commissioners and of Government.)

Mr.Robertson retired from the Commissioners service on 2nd August 1930? (1932) and was paid the following amounts :-

Commissioners' Contribution on account of Ante-Dated Provident Fund on 1.4.1925.	29,739: 2: 0
Interest on ditto for 5 years at 5½% compounded half-yearly.	9,841: 4: 0.
Commissioners' Contribution for 5 years from 1.4.25 to 2.8.1930 with interest compounded half-yearly.	11,676: 4: 0.
Retiring Bonus (maximum) (Income-tax Rs 1,771:3:0)	25,000: 0: 0
	Rs 76,256:10: 0

These figures are exclusive of Mr.Robertson's own contributions both Voluntary and Compulsory, and the interest thereon.

Mr.Robertson's last substantive pay as Deputy Chief Accountant was Rs 1800/- and his acting pay as Officiating Chief Accountant Rs 2200/-.

A copy of the Commissioners' Resolution passed at the 1995th Meeting, held on the 12th March 1928, placing on record their appreciation of Mr.Robertson's long and faithful service, is attached.

Chief Accountant.

27th October 1932.

Note. This statement amply corroborates my Income-tax appeal

E J Robertson
2nd Nov 1932

INCOME TAX OFFICE
2nd DEC. 1932
M. STATION BANGALORE

3

42 A, South Parade, Bangalore
1st December 1932

To
The Commissioner of Income Tax,
(Through the Asst Commrs and the Income Tax Office)

1048

Sir,

I have the honour to invite your attention to my Income Tax Appeal dated 3rd October, and subsequent correspondence. I was informed by the Income Tax Officer, on Oct 27th, that my appeal had been forwarded to you for disposal. As a month has elapsed I respectfully venture to send this reminder.

My case is a really simple one. By whatever name the Calcutta Port Commissioners, and the Income tax authorities, may choose to call the 25,000 in question, it was de facto the consolidated equivalent of a part of the pension I had already earned. This is my whole case.

I claim that the amount should be dealt with as laid down in Section 4 (3) (5) of the Act, as it was to all intents, constructions and purposes "a capital sum received in commutation of a portion of a pension." No other construction can be placed on this lump-sum receipt, taking into account all the facts given in my appeal.

Having attained the age of 55, and having rendered 25 years approved qualifying service, it was optional with me to have claimed my pension, and to have commuted half of it. The 25,000 in question was the lump-sum I accepted in lieu of a part of the

pension I had already earned. From the facts adduced in support of my appeal it is clear that sanction to the pension in my case was a formality, and in no conceivable case could it have been withheld, as I had rendered the full amount of continuous and approved qualifying service. The spirit of the law is the life of the law. Unless the spirit of the law is deliberately sacrificed the fact that the pension was not actually sanctioned cannot weigh against the fact that the pension was fully due and had actually been earned.

I have the honour to be
Sir,
Your most Obedient Servant,

R. J. Robertson

II

Asst/III

Forwarded to the Comms. of Income-tax in Continuation of this office letter No. 7/666 Dated 9-11-32

SNI (Cert)

Collector of Income-tax Officer,
Bangalore

7/666
D/ 7/12/32.

4

Draft.

No. 251 Dated 11th Jan. 1933

From

The Commissioner of Income-tax,
Civil and Military Station,
Bangalore.

To

E. J. Robertson, Esq.,

424, South Parade, Bangalore.

(B)

Income-tax Appeal Petition No.3 of 1932-33 - Your letter dated the 1st December, 1932.

S.N.3. Encl. to P.u.c.

(K)

In the return of income filed by you, you have stated that income-tax was deducted at source on the amount of the Retiring ~~Returning~~ Bonus paid to you and that you were appealing against the deduction of tax to the Assistant Commissioner of Income-tax, Calcutta. The result of that appeal may kindly be intimated.

COMMISSIONER OF INCOME-TAX.

6-1-33

Reg. No. 92
6/11/33

L5

To

The Commissioner of Income Tax,

Through the Asst. Commr. and the I.T. Officer,

C. and M. Station Bangalore.

(B)

Sir,

I have the honour to invite your attention to my Income Tax appeal of the 3rd October 1932.

In support of my claim that the Rs 25,000 I received on retirement, was the commuted value of a part of my pension, and is exempt under Section 4 (3)(V) will you please refer to "The Law of Income Tax in India by V. S. Sundaram. At page 411 he says:—

"It was ruled in Rutherford's case by the Patna High Court that as in the case of terms like "penalty" and 'liquidated damages' the real nature of a transaction should be examined and that merely calling a payment a gratuity will not make it such, if it is really of the nature of a commuted pension. A lump sum actuarially equated to a hypothetical pension is a commuted payment of pension for the purpose of this clause. [Sec 4(3)(V)]

"It is not necessary that a pension should be first sanctioned, or even claimable as of right Further the concession given by this clause is not confined to pensions granted by Government."

Nothing could be more to the point than this dictum of a leading authority on the law of Income Tax. It deals with my whole case in a nutshell. All that I ask the Income tax authorities to do is

to examine the nature of the transaction

If, as I have shewn in my appeal, it was de facto the consolidated value of a part of my pension, "merely calling it a gratuity does not make it such", as Sundaram so clearly points out.

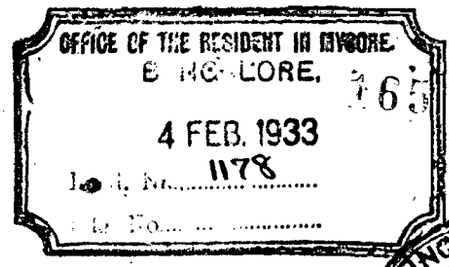
There is no magic in the word "Gratuity". It may have caused some confusion of ideas in the minds of the framers of Section 7, but it cannot alter the facts of my case I have dealt fully in my appeal with the nature of the transaction, and I have shown conclusively that the 25,000 was the commuted value of a part of my pension, or in the words of

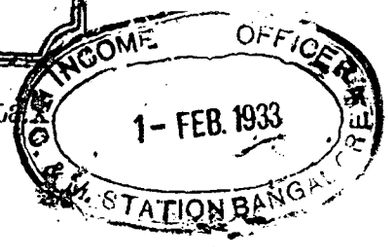
16 Rec'd N. 337 12/1/33 16

Captain G. Kirkbride, I.A.,
Commissioner of Income-tax,

Sir, Income-tax Appeal

In reply to your letter No. 251 347 of 1932 of the 11th January 1933 I have the honour to inform you that in reply to my appeal to the Asst. Commr. of Income-tax, Calcutta I was informed





To

The Commissioner of Income-tax

Through

The Asst: Commissioner &
the Income-tax Officer,
Civil & Military Station,
Bangalore.

Sir,

I have the honour to request the favour of an interview in connection with my income-tax appeal.

These are certain facts in the case that are beyond dispute.

A. I joined the Port Commissioner's service as a pensionable employee, and continued as a pensionable employee till I attained the age of 55.

B. I had already qualified for a retiring pension, and under the Port Commissioner's Rules could have retired, and commuted half my pension. I may explain that the Calcutta Port Commissioner, with the sanction of the Government of India, have adopted the C.S.R. and the Fundamental Rules, in their Entirety, in calculating Pensions etc.

C. In 1925 after attaining the age of 55, instead of retiring I exercised the option allowed me by the Port Commissioner, of commuting my pension for an Antedated Provident Fund (calculated on the basis of 1/12th of salary drawn since the date of joining the service) plus a Retiring Bonus of Rs.25,000/- (maximum).

D. I had the option of continuing as a

pensionable

pensionable employee, and on the date on which I actually retired, after completion of 30 years service, viz., 2nd August 1930, I would have been entitled to a pension of Rs.575/- per mensem half of which I was entitled under the rules to commute.

5. The amount of the Ante-dated Provident Fund calculated by the Chief Accountant, Port Commissioner, as due to me on the date I joined the Fund was Rs.29,739/2/-. In addition to this amount I was entitled, on giving up my pension rights, to a lump-sum Retiring Bonus of Rs.25,000/- (maximum). My case was an exceptional one, as I had already qualified for a retiring pension, and I had the option:-

(a) to Proceed on leave preparatory to retirement,

(b) to continue as a pensionable employee,

(c) to give up my pension rights for an Ante-dated Provident Fund plus a Retiring Bonus.

All these facts A to E are beyond dispute and are fully corroborated by the Chief Accountant, Port Commissioners in his statement dated 27th Ocotober, 1932. This statement, which is an extract from my service records, has been submitted to you in original, and a certified copy is now enclosed for easy reference.

It will be seen that my pensionary rights were calculated at the time I joined the Fund to be equivalent to Rs.29,739/2/- plus Rs.25,000/-. No other interpretation can possibly be placed on the option that was allowed me by the Port Commissioners. It was the additional inducement of the Retiring Bonus of Rs.25,000/- that affected my decision. It was my business, both as Dy. Chief Accountant and as Offg. Chief Accountant, to be conversant with the Commissioners Pension and Provident Rules, and it is obvious that I would not have waived the full amount of my pension for a sum of Rs.29,739/2/-, which was in fact, as I

was well aware, only equivalent to half the commutation value of my pension according to the C.S.R.

It is evident therefore that what the Commissioners offered me and what I accepted, was the commutation of my whole pension for an Ante-dated Provident Fund of Rs.29,739/2/- plus a Bonus of Rs.25,000/-.

By whatever name the Calcutta Port Commissioner or the Income-tax authorities, may choose to call the Rs.25,000/- in question, it was de facto the consolidated equivalent of a part of the Pension I had already earned. Taking into account the facts no other construction can be placed on this lump-sum capital receipt.

Fortunately for me I can quote a leading authority on Income-tax, in support of my contention that the amount of Rs.25,000/- must be dealt with as laid down in Section 4 (3)(V) of the Act. In "The Law of Income Tax in India", V.S. Sundaram says:-

> It was ruled in Ruthuford's case by the Patna High Court that as in the case of terms, like 'penalty' and 'liquidated damages' the real nature of a transaction should be examined and that merely calling a payment a gratuity will not make it such, if it is really of the nature of a commuted pension. A lump-sum actuarially equated to a hypothetical pension is a commuted payment of pension for this clause. It is not necessary that a pension should be first sanctioned, or even claimable, as of right. Further the concession given by this clause is not confined to pensions granted by Government.

This is my case in a nutshell. The more the "real nature of the transaction" is examined the clearer it becomes that the Rs.25,000/- was the commuted value of a part of my pension. "Merely calling it a gratuity does not make it such". The facts of the case all go to show that it was "really of the nature of a commuted

pension",

The Commissioners for the Port of Calcutta.

CHIEF ACCOUNTANT'S OFFICE,

Dated 27th October, 1932.

EXTRACT FROM THE SERVICE RECORDS OF MR.E.J. ROBERTSON.

Mr. E.J. Robertson, late Deputy Chief Accountant, entered ~~into~~ the service of the Commissioners for the Port of Calcutta on the 15th May 19(

His date of birth is shewn in the service register as 8th December 1869.

He joined the Ante-Dated Provident Fund on 1st February 1925, after he had attained the age of 55.

(Assuming that instead of joining the Provident Fund, Mr. Robertson had exercised his option of continuing as a pensionable employee, as he had already attained the age of 55, he could under the Rules have applied for leave preparatory to retirement, and at the end of such leave would have rendered a qualifying service of 30 years, a deficiency of 4 months and 14 days being condoned under Article 423 (1) of the C.S.R., entitling him to an ordinary pension of Rs.500/- per month and an Additional Pension of Rs.75/- per month for three years effective service as Officiating Chief Accountant (subject to such pension being recommended by the Head of the Department, and to sanction of the Commissioners and of Government). Under the Rules he could have applied for the commutation of half of his Pension (subject to the sanction of the Commissioners and of Government). It must be distinctly understood that these are merely assumptions based on the Commissioners Leave and Pension Rules, and in Mr.Robertson's case would have required the sanction of the Commissioners and of Government.)

Mr. Robertson retired from the Commissioners service on 2nd August 1930 and was paid the following amounts:-

Commissioners' Contribution on account of Ante-Dated Provident Fund on 1.4.1925.	Rs.29,739	2	0
Interest on ditto for 5 years at 5½% compounded half yearly.	" 9,841	4	0
Commissioners' Contribution for 5 years from 1.4.25 to 2.8.30 with interest compounded half yearly. ...	" 11,676	4	0
Retiring Bonus (maximum) (Income-tax Rs.1,771.3.0)	" 25,000	0	0
	Rs.76,256	10	0

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Draft.

No. 2035 Dated 4th March 1933

From

The Secretary to the Resident
and
Commissioner of Income-tax.

To

The Secretary,
Central Board of Revenue,
New Delhi.

Sir,

I have the honour to state that in connection with an appeal preferred by Mr. E.J. Robertson, late Deputy Chief Accountant for the Commissioners for the Port of Calcutta, now residing at Bangalore, against his assessment for 1931-32, the question has arisen whether a sum of Rs.25,000/- paid to Mr. Robertson by his employers at the time of his retirement from their service in 1930, is to be treated as a receipt under the head "Salaries" as defined in section 7(1) and charged to income-tax, or whether it should be regarded as a "capital sum received

in

a pension of Rs.575/-, provided a deficiency of 4 months and 4 days was condoned under Article 423(1), C.S.R. Under the rules, he could also have applied for the commutation of half of his pension. Mr. Robertson, however, accepted the second alternative and was accordingly paid the following amounts when he retired from service in 1930:-

	Rs.	a.	p.
(i) Commissioners' Contribution on account of the Ante-Dated Provident Fund on 1-4-1925.	29,739	2	0
(ii) Interest on -do- for 5 years at 5½% compounded half-yearly.	9,841	4	0
(iii) Commissioners' Contribution for 5 years from 1-4-1925 to 2-8-1930 with interest compounded half-yearly.	11,676	4	0
(iv) Retiring Bonus (maximum).	25,000	0	0
	76,256	10	0

3. In the course of his assessment, Mr. Robertson claimed that the Retiring Bonus of Rs.25,000/- should be exempted from tax under section 4(3)(v) as it was received by him in

in part commutation of his pension. The Income-tax Officer did not agree, as, in his opinion, the payment was really of the nature of a gratuity. He considered that, Mr. Robertson having waived his pensionary rights for the benefits accruing from a Provident Fund plus a Retiring Bonus, he was not entitled to a pension at all at the time of his retirement, and that there could, therefore, be no question of the amount being the commuted value of a pension. The amount was accordingly taxed by him under section 7 of the Act.

4. The assessee has appealed to me and the main contention raised by him is that, by whatever name the Calcutta Port Commissioners or the Income-tax authorities may choose to call the amount in question, it was de facto the consolidated equivalent of a part of his pension for the purposes of section 4(3)(v). In support of his argument he quotes

the

× Page 41 of the Book put up

the following passage from Mr.Sundaram's Law of Income-tax in India:-

"It was ruled in Rutherford's case by the Patna High Court that as in the case of terms like 'penalty' and 'liquidated damages', the real nature of a transaction should be examined, and that merely calling a payment a gratuity will not make it such if it is really of the nature of a commuted pension. A lump sum actuarially equated to a hypothetical pension is a commuted pension for the purpose of this clause. It is not necessary that a pension should be first sanctioned, or even claimable as of right. Further the concession given by this clause is not confined to pensions granted by Government".

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According to Mr. Robertson, the only interpretation that can possibly be placed on the option that was allowed to him by the Port Commissioners is that his pensionary rights were calculated at the time he joined the Fund in 1925 to be equivalent to Rs.29,739-2-0 plus Rs.25,000/-. It was his business, he says, both as Deputy Chief Accountant and as Officiating Chief Accountant, to be conversant with the Commissioners' Pension and Provident Fund Rules, and he would not obviously have waived the full amount of his pension for a sum of Rs.29,739-2-0, which was in fact,

as

the maximum ~~amount~~ admissible, namely, one-sixth of the total income from salary including the Bonus in question, has been allowed by the Income-tax Officer.

6. I should have been inclined to accept the first ground of objection, but the point does not seem to be altogether free from doubt. In the first place, this sum of Rs.25,000/- was not placed to the credit of Mr. Robertson at the time he waived his pensionary rights and interest allowed on it.as was done in the case of the other sum of Rs.29,739-2-0. It was paid to him only on retirement. Again, the Fund amount of Rs.29,739-2-0 plus the Bonus of Rs.25,000/- is not equal to the actuarial value of a hypothetical pension nor does the amount of the Bonus appear to have been calculated with reference to the commuted value of the pension to

which.

which he was entitled. Having given up his pensionary rights, his case appears to be similar to that of a non-pensionable employee who receives a lump sum gratuity at the time of retirement; and gratuity is prima facie liable to tax under section 7(1) unless it has been specially exempted under section 60.

7. I am, however, of opinion that it is unfair to tax a lump sum like this received by an employee at the time of his retirement, while similar payments, made to Railway servants, for example, are exempt from tax.

8. In the circumstances, I request that the matter may kindly be placed before the Board for a ruling. I wish to add that, if in the opinion of the Board, such receipts are

taxable

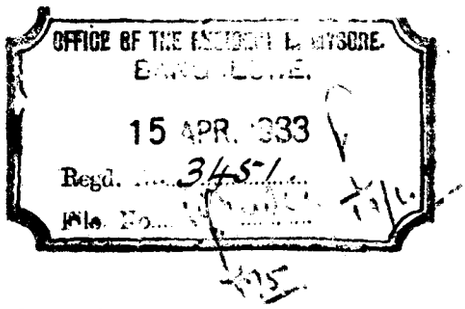
C. No. 224-IT/33.

CENTRAL BOARD OF REVENUE.

FROM

M. C. Khanna, Esqr.,

Offg: *Secretary, Central Board of Revenue,*



To

The Commissioner of Income-tax,
Civil & Military Station,
Bangalore.

~~Simla~~/New Delhi, the 7th April ~~192~~ 1933.

SIR,

Liability to tax - Port Trust Gratuity - Robertson (Mr. E. J.). Your letter No. 2035/347-1932, dated 4. 3. 1933.

In reply to your letter quoted above, I am directed to say that in view of the Privy Council decision in Shaw Wallace case the sum of Rs 25,000 drawn by Mr. Robertson as retiring bonus is not liable to tax.

I have the honour to be,

Sir,

Your most obedient servant,

M. C. Khanna

8. 4. 1933.
Offg: Secretary, Central Board of Revenue.

IN THE OFFICE OF THE ASSISTANT COMMISSIONER OF INCOME-TAX,

CIVIL AND MILITARY STATION, BANGALORE.

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No. 3585 Exc I Record Dated the 11 th May, 1933.

Before:- Captain G. Kirkbride, I.A.,
Secretary to the Resident and Assistant
Commissioner of Income-tax.

Income-tax Appeal No. 3/1932-33.

Mr. E. J. Robertson,
42 A, South Parade, Bangalore.) Appellant.

ORDER.

This is an appeal preferred by Mr. E. J. Robertson, late Deputy Chief Accountant for the Commissioners for the Port of Calcutta, now residing at Bangalore, against his assessment to income-tax for 1931-32. The question that has been raised in appeal is whether a sum of Rs.25,000/- paid to the appellant by his employers at the time of his retirement from their service in 1930, as a retiring bonus, is liable to income-tax under the Indian Income-tax Act, 1922.

2. In the case of the Commissioner of Income-tax, Bengal, vs. Shaw, Wallace & Co., I.L.R. LIX Calcutta 1343, their Lordships of the Privy Council have held that the object of the Indian Income-tax Act is to tax "income", a term which it does not define. Income, their Lordships hold, connotes "a periodical monetary return 'coming in' with some sort of regularity, or expected regularity, from definite sources".

3. In view of the above decision of their Lordships, the sum of Rs.25,000/- in question cannot be considered as in the nature of an "income" receipt and is not, therefore, liable to income-tax. The appeal is therefore allowed and the assessment

will